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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JASON M., a Person Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

C. S.,

Defendant and Appellant.

D042570

(Super. Ct. No. J512219B)

APPEAL from a judgment of the Superior Court of San Diego County, Susan D.
Huguenor, Judge. Affirmed.

C. S. (Mother) appeals a judgment terminating her parental rights to her son,
Jason M., under Welfare and Institutions Code section 366.26.¹ Mother asserts the court

¹ All statutory references are to the Welfare and Institutions Code.

erred in terminating her parental rights because (1) it relied on an inadequate assessment report; (2) she established she had a beneficial relationship with Jason within the meaning of section 366.26, subdivision (c)(1)(A); and (3) termination of her parental rights was not in Jason's best interests. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In 1998, S. L., who is not a subject of this appeal, was removed from Mother's custody because she physically abused that child and abused drugs. S. L. was returned to Mother's custody, but was removed along with Jason in 1999 because of physical abuse. Jason was returned to Mother's care, and S. L. was placed in long-term foster care.

In September 2001, the San Diego County Health and Human Services Agency (the Agency) received a referral that Mother physically abused Jason because he had a reddened handprint on his buttock. Consequently, the Agency removed Jason, then age two, from Mother's custody and filed a section 300 petition on his behalf. In November, the court made a true finding on the petition and ordered reunification services. Subsequently, a psychologist recommended Mother receive drug treatment because of her long substance abuse history. The court ordered Mother to attend therapy and to drug test on demand.

Mother made some attempts to participate in her services, but by the 12-month review hearing, the social worker did not believe Mother had made sufficient progress to reunify with Jason within the statutory time frame. Consequently, at the January 2003 12-month review hearing, the court terminated reunification services and scheduled a section 366.26 hearing.

At the June 2003 section 366.26 hearing, the court found Jason was adoptable. Finding none of the section 366.26, subdivision (c)(1) exceptions applied, the court terminated parental rights.

DISCUSSION

I

Mother argues the court erred by terminating parental rights because it relied on a statutorily deficient assessment report. However, Mother did not challenge the adequacy of the assessment report at trial. Her failure to do so waives her ability to challenge its adequacy on appeal. (*In re Crystal J.* (1993) 12 Cal.App.4th 407, 411; *In re Brian P.* (2002) 99 Cal.App.4th 616, 623.)

Mother contends she has not waived her right to challenge the assessment report because she is challenging its sufficiency, not its admissibility. However, a parent may not challenge the sufficiency of the assessment report on appeal if he or she has not challenged it in the trial court.² (*In re Urayna L.* (1999) 75 Cal.App.4th 883, 886.)

In any event, even assuming Mother has not waived her right to contest the adequacy of the assessment report, she has not demonstrated the report was inadequate. Once a section 366.26 hearing has been scheduled, the Agency must file an assessment

² A parent may challenge the sufficiency of the evidence supporting the juvenile court's finding of adoptability without raising the issue in that court. (*In re Brian P.*, *supra*, 99 Cal.App.4th at p. 623.) However, regardless of Mother's arguments to the contrary, she is not challenging the sufficiency of the evidence; she is challenging only the sufficiency of the assessment report. She challenges the sufficiency of the evidence in her argument regarding the section 366.26, subdivision (c)(1)(A) exception.

report that reviews the contact between the child and his or her parent since the time of placement. (§ 366.21, subd. (i)(2).) Mother asserts the report prepared in this matter did not include sufficient information about Jason and Mother's contacts. However, the report need only be in substantial compliance with statutory requirements. (*In re John F.* (1994) 27 Cal.App.4th 1365, 1378.) Any deficiencies in the report affect its evidentiary weight, not its admissibility. (*In re Crystal J., supra*, 12 Cal.App.4th at p. 413.)

Here, the social worker discussed four visits between Jason and Mother in February and March 2003 in the assessment report. She also attached reports from the supervised visitation services about six visits between January and March 2003 and the foster parent's observations of several visits during July, August, and September 2002.³ The assessment report sufficiently detailed the contacts between Jason and Mother since July 2002.

Additionally, a deficient or missing assessment report is not grounds for reversal when the juvenile court received the information in a different manner. (*In re Dakota S.* (2000) 85 Cal.App.4th 494, 502-503.) Here, the same judicial officer presided over the six-month review hearing, the 12-month review hearing, and the section 366.26 hearing. At the six- and 12-month review hearings, the judge reviewed the social worker's reports and the reports from Jason's Court Appointed Special Advocate (CASA). Those reports

³ These letters are not attached to the report in our record, with the exception of one page of a letter dated August 13, 2002. However, we assume complete copies of those letters were attached to the record filed with the juvenile court. In any event, those letters were filed with the juvenile court at other times.

detailed contacts during the months preceding each hearing. At the 12-month review hearing, two social workers and Mother testified about the visits between Jason and Mother. Likewise, one social worker and Mother testified about the contacts between Jason and Mother at the section 366.26 hearing. As a consequence, even assuming the assessment report was deficient, no reversal is required because the juvenile court had sufficient information before it about the contacts between Jason and Mother.

II

Mother argues the court erred in terminating parental rights because she established the existence of the section 366.26, subdivision (c)(1)(A) exception to termination of parental rights.

Mother contends there is insufficient evidence to support the court's finding the section 366.26, subdivision (c)(1)(A) exception did not apply to her relationship with Jason. The issue of sufficiency of the evidence in dependency cases is governed by the same rules that apply to all appeals. If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534.) We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record most favorably to the juvenile court's order, and affirm the order even if other evidence supports a contrary conclusion. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) The appellant has the burden of showing the finding or order is not supported by substantial evidence. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.)⁴ The court must determine by clear and convincing evidence whether a minor is adoptable. (§ 366.26, subd. (c)(1).) If the court finds a minor is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds termination of parental rights would be detrimental to the minor under one of the specified exceptions. (*Ibid.*) The parent has the burden to show termination would be detrimental to the minor under one of those exceptions. (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108.) The section 366.26, subdivision (c)(1)(A) exception to the adoption preference applies if termination of parental rights would be detrimental to the minor because "[t]he parents . . . have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship."

Here, because we infer the court found Mother regularly visited Jason, we examine the record to determine if substantial evidence supports the court's finding that she did not have a beneficial relationship with him. We have interpreted the phrase "benefit from continuing the relationship" to refer to a "parent-child" relationship that

⁴ Mother asks us to ignore *In re Autumn H.*, *supra*, 27 Cal.App.4th 567 and *In re Beatrice M.* (1994) 29 Cal.App.4th 1411 because these cases have imposed additional requirements not contemplated by the Legislature in enacting section 366.26, subdivision (c)(1)(A). We decline to do so. (See *In re Casey D.* (1999) 70 Cal.App.4th 38, 51-52; *In re Amanda D.* (1997) 55 Cal.App.4th 813, 821.) Moreover, despite Mother's argument to the contrary, a parent may establish a beneficial relationship exists under the *In re Autumn H.* and *In re Beatrice M.* analyses as evidenced by our decision in *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1207.

"promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

To meet the burden of proof for this statutory exception, the parent must show more than frequent and loving contact or pleasant visits. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) "Interaction between natural parent and child will always confer some incidental benefit to the child The relationship arises from the day-to-day interaction, companionship and shared experiences. [Citation.]" (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) The parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive, emotional attachment from child to parent. (*Ibid.*; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.)

Here, although Jason appeared to enjoy visits, he did not view Mother in a parental role. He often wanted to play with his scooter instead of visiting with Mother. He wanted to end some visits early. At some visits, he watched television instead of interacting with Mother. In contrast, he identified his foster father as "daddy," and shared a significant emotional attachment with him. The foster father met Jason's daily physical,

emotional, and behavioral needs. Jason's psychological and emotional roots were "tied" to his caregiver.

Moreover, although Mother made snacks for Jason, played with him, and attempted to teach him during visits, her other behavior was not parental. She did not allow Jason to express his emotions and did not show him how to play with certain toys. Her attempts to show interest in Jason or initiate play were short-lived. She appeared uninterested in Jason's activities. She did not listen to him or act responsively to his needs during visits. During some visits, she did not want to hear about Jason's activities or play with him until she discussed her own problems. During one visit, she watched Jason play with other children instead of interacting with him. Further, she did not want to visit with him more than one day a week.

The social worker did not believe Jason had a beneficial parent-child relationship with Mother. Although the visits were pleasant, the social worker believed the relationship was one of child and extended family member. This is because Jason asked for his caregiver or mentioned him during every visit, sought to end visits early, was not distressed when visits ended, and did not seek to extend visits. Further, Mother had not been involved with meeting Jason's daily physical, emotional, and psychological needs. The social worker believed maintaining the legal parent-child relationship between Mother and Jason did not outweigh the permanence and sense of belonging Jason would derive from being adopted.

Likewise, Jason's CASA believed the child's primary bond was with his foster father, not Mother. She believed severing Jason's relationship with Mother would not be

detrimental to the child and he would not receive any long-term benefit from maintaining his legal relationship with Mother. She did not believe Jason would be harmed if he did not have contact with Mother. Mother introduced no contrary expert evidence. Substantial evidence supports the trial court's finding that the section 366.26, subdivision (c)(1)(A) exception did not apply.

III

Mother asserts the court erred in finding it was in Jason's best interests to terminate parental rights. Under section 366.26, after the court determines a minor is adoptable, it must terminate parental rights unless it finds one of the section 366.26, subdivision (c)(1) exceptions applies. (*In re Ninfa S.* (1998) 62 Cal.App.4th 808, 811.) Mother is correct that the court should consider the minor's best interests when making its determination in a section 366.26 hearing. (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1165.) As this court has already stated, the purpose of the specified exceptions to adoption provided in section 366.26, subdivision (c)(1) is to ensure termination of parental rights is in the minor's best interests and is the least detrimental alternative. (*In re Tabatha G.*, *supra*, 45 Cal.App.4th at p. 1165.) However, we have also stated that if no exceptions apply, it is in the minor's best interests to terminate parental rights. (See, e.g., *In re Ninfa S.*, *supra*, 62 Cal.App.4th at p. 811.) Having made the necessary findings under the statutory scheme to terminate Mother's parental rights, the court was not required to further consider whether Jason's best interests would be better served by

another permanent plan.⁵ (*In re Tabatha G.*, *supra*, 45 Cal.App.4th at p. 1165.)

Although Mother urges us to look beyond this scheme, we decline to do so.

DISPOSITION

The judgment is affirmed.

BENKE, J.

WE CONCUR:

McCONNELL, P. J.

McDONALD, J.

⁵ Mother asserts it was in Jason's best interests to maintain his legal relationship with Mother because he would otherwise lose his relationship with his sister, S. L. We infer this is an argument that the section 366.26, subdivision (c)(1)(E) exception applies. However, Mother has waived this argument by not supporting it with any citation to the record or any authority. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) In any event, because the prospective adoptive parent intended to maintain the contact between Jason and S. L., the exception would not apply, as there would be no substantial interference with the relationship between the children. (§ 366.26, subd. (c)(1)(E).)